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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/672,133

09/26/2003

Stephen A. Ewald

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EXAMINER

FADOK, MARK A

ART UNIT

PAPER NUMBER

3625

MAIL DATE

DELIVERY MODE

09/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/672,133	Applicant(s) EWALD, STEPHEN A.	
	Examiner MARK FADOK	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 3/17/2008 which was received 7/21/2008. Acknowledgement is made to the amendment to claims 1, 9 and 12. The examiner has carefully considered applicants arguments and amendment and finds them persuasive, however the arguments are moot due to the new rejection necessitated by amendment:

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 9 and 12 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the product or services being downloaded, does not reasonably provide enablement for the download being made directly to the broadcast receiver.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-13, 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kesling et al. (US 2002/0132575 A1) in view of Borovoy (US 20030204446) or Joseph (US 5,819,034) and further in view of Applicant's Admitted Prior Art APA (see Ewald US PG PUB 20050071240 specifically para 0020 lines 16-20).

Kesling et al. discloses a method for purchasing goods and services linked with broadcast media (par. 0039 and Figs. 1-3).

The method comprises receiving at least one broadcast receiver a broadcast media including information relating to goods and services that can be purchased by persons receiving the media; selectively recording purchase data at the broadcast receiver for a good and service that a person purchases relating to the broadcast media; sending the purchase data from the broadcast receiver to at least one server; receiving the purchase data at the at least one server; and verifying the purchase data from the broadcast receiver at the at least one server.

Kesling et al. references U.S. application serial number 09461,699 and incorporates such application by reference. See Kesling et al. at paragraphs [0007]-[0010]. Accordingly, the disclosure of such application forms part of the Kesling et al. disclosure as of the date of the incorporation by Kesling et al.

Kesling et al. builds upon the system and method disclosed by '699. The '699 disclosure states that "the receiver is adapted to receive an input from the user by which the user is able to signal an interest in purchasing a selection of music or data being played and/or displayed" ('699 at page 2, last line-page 3, line 2). Accordingly, claims 1, 9, 12 (as amended to recite "each receiver further selectively receiving a purchase request and recording purchase data for goods and services that a person purchases relating to the broadcast media" (claim 1, for example, and similar language in claims 9 and 12), is anticipated by Kesling et al.

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Kesling teaches sending purchase related information back to the server using a one click method (para 0065), but does not specifically mention that the purchase is accomplishable without further interaction from the person. Borovoy teaches using the Amazon.com one click method to send purchase data from a portable device to a website in a one click manner (para 0017). It would have been obvious to a person of ordinary skill in the art at the time of the invention to include in Kesling providing a one-click method of ordering as taught by Borovoy, because it has been well establish that impulse buying is responsible for many sales and the removing of steps required to consummate the sale further provides for a impulse sale. Or in an alternative rejection, Kesling teaches sending purchase related information back to the server using a one click method (para 0065), but does not specifically mention that the purchase is accomplishable without further interaction from the person. Joseph teaches initiating a transaction from a broadcast receiver (col 8, lines 35-67). It would have been obvious to a person of ordinary skill in the art at the time of the invention to include in Kesling providing a one-click method of ordering as taught by Joseph, because it has been well establish that impulse buying is responsible for many sales and the removing of steps required to consummate the sale further provides for a impulse sale.

The combination of Kesling, Borovoy or Joseph teaches that the system supports downloads (Kesling, para 0009) but does not specifically mention that the purchased goods or services are directly downloaded to the broadcast receiver. APA para 0020, teaches that "the delivery of goods and services can be accomplished through any method known in the art, such as mail, courier, direct download or electronic

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transaction, follow up communication, or other delivery method.". It would have been obvious to a person of ordinary skill in the art at the time of the invention to include in the combination of Kesling, Borovoy or Joseph, directly downloading the purchased item to the broadcast receiver, because this gives the user instant access for usage at the receiver and promotes instant satisfaction which provides for impulse sales that are not scrutinized later and possibly not purchased at a later date.

Regarding claim 3: the purchase data may be transmitted at a predetermined location (par. 0043).

Regarding claims 5 and 6, respectively: Kesling discloses that the broadcast media may be an advertisement (information about the purchase of a particular good or service) or a song (no information about the purchase of such song).

Regarding claims 7 and 8, respectively: the broadcast receiver may comprise either a single device (par. 0041) or an "intermediate transfer device" may be additionally employed as a purchase selection device (par. 0042).

Applicant's attention is directed to the Kesling et al. disclosure regarding "low" and "high" power wireless transmitters (600 and 700, respectively).

In regards to claim 20, the combination of Kesling and Borovoy teach where in the two devices are separate (Kesling 00042).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kesling et al. (US 2002/0132575 A1) in view of Borovoy or Joseph and further in view of Official Notice regarding secure communication channels.

Kesling et al. does not disclose a secure communication channel. However, it is notoriously well-known to employ secure communication channels when endeavoring to conduct transactions of the type disclosed by Kesling. One of ordinary skill in the art would have modified the Kesling method to have included sending purchase data via a secure channel in order that confidential information relative to the customer or the customer's account is not readily intercepted.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300 [Official communications; including

After Final communications labeled

"Box AF"]

For general questions the receptionist can be reached at

571.272.3600

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Mark Fadok/

Primary Examiner, Art Unit 3625